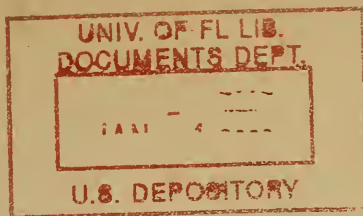


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**THE AMERICAN COMMISSIONER
MIXED CLAIMS COMMISSION
UNITED STATES AND GERMANY**

DECISION NO. 58

IN THE MATTER OF

FIXING REASONABLE FEES FOR ATTORNEYS OR
AGENTS UNDER THE AUTHORITY OF SECTION 9 OF
THE "SETTLEMENT OF WAR CLAIMS ACT OF 1928"

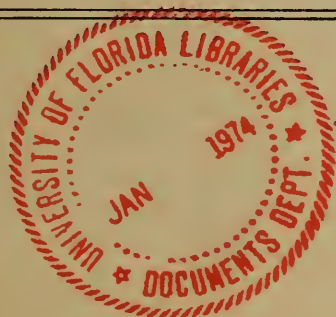
DOCKET NO. 6688

*Pierrepont E. Twitchell, Executor of Estate of Herbert C. F.
Godwin, Deceased, Claimant*

Peter Baumer, Attorney

CHANDLER P. ANDERSON
American Commissioner

U. S. GOVERNMENT PRINTING OFFICE: 1930



MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

Established in pursuance of the Agreement between the
United States and Germany of August 10, 1922

CHANDLER P. ANDERSON

American Commissioner

(II)



THE AMERICAN COMMISSIONER
MIXED CLAIMS COMMISSION
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DECISION NO. 58

IN THE MATTER OF

FIXING REASONABLE FEES FOR ATTORNEYS OR
AGENTS UNDER THE AUTHORITY OF SECTION 9 OF
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DOCKET NO. 6688

Pierrepont E. Twitchell, Executor of Estate of Herbert C. F. Godwin, Deceased, Claimant

Peter Baumer, Attorney

The above named claimant has duly filed with the American Commissioner a written request that he fix a reasonable fee to be paid to the attorney, Peter Baumer, of New York City, N. Y., as compensation for whatever services have been rendered by him on behalf of and with the authority of Captain Herbert C. F. Godwin, the original claimant in this case, prior to his death on February 21, 1928, such services being of the character described in the provisions of Section 9 of the "Settlement of War Claims Act of 1928."

The claimant has objected to the amount of the fee asked by the attorney on the ground that it is excessive, and the attorney has been

notified of the filing by the claimant of this request that a reasonable fee be fixed. The attorney, in response to a request by the American Commissioner, has filed with him four affidavits giving the information which he desires to have considered by the Commissioner as showing the reasonableness of the fee asked, which information has been brought to the attention of the claimant, who has filed three affidavits in reply, copies of which have been communicated to the attorney.

In this case an award was rendered by this Commission on February 17, 1926, on behalf of Herbert C. F. Godwin, for \$20,000, with interest thereon at the rate of five per cent per annum from November 1, 1923, to the date of payment, which amount represents damages for personal injuries suffered by him through the sinking on November 28, 1917, of the steamship "Albert E. Watts" by a German submarine, and for the further sum of \$2,000, with interest thereon at the rate of five per cent per annum from November 11, 1918, to the date of payment, which amount represents the value of personal property belonging to Captain Godwin, which was lost through the submarine attack. Captain Godwin was a member of the crew of the "Albert E. Watts" in the capacity of Chief Officer.

The amount of the fee asked by the attorney is \$13,758.13, being fifty per cent of the amount of \$27,516.26 received by the Estate of Captain Godwin from the Treasury Department in payment of the award of this Commission in this case.

It appears from the affidavits and documents filed in this case that on July 13, 1925, Captain Godwin retained this attorney to prosecute and collect this claim on a fifty per cent contingent fee basis, and on January 23, 1926, Captain Godwin executed a "final power of attorney" in favor of this attorney authorizing him to accept on behalf of Captain Godwin the offer of the German Agent totalling \$22,000 with interest, which, as above indicated, was the amount finally awarded by this Commission.

The above mentioned "final power of attorney" not only authorized, as above stated, the acceptance of the German Agent's offer of the award which was finally made by this Commission, but also fixed the sum of \$11,000 as the fee to be paid to this attorney for all services "rendered or to be hereafter rendered by him,"

which fee also covered "advances made" and "disbursements incurred" by him. In order to make the meaning and intent of this power perfectly clear it states in conclusion that "the object and purport hereof being that the said Peter Baumer, his executors, administrators, assigns or designees, receive a lump sum of Eleven Thousand (\$11,000) Dollars out of the proceeds of the settlement hereinbefore recited, and the rest, residue and remainder of the said fund with all accrued interest on the amount of settlement agreed on as hereinbefore recited, are to be paid over to me the said Herbert Charles Fraser Godwin, or unto my heirs, executors, administrators or assigns."

It is to be noted that this power of attorney was executed and filed after it had been definitely settled what amount would be awarded by this Commission, and after the services rendered by this attorney in the presentation and prosecution of this claim had been fully completed, and it was definitely known both to the claimant and the attorney exactly the character and extent of the services rendered, "advances made" and "disbursements incurred." Accordingly, the amount of compensation fixed by them in this power of attorney, which was prepared by the attorney and executed at his request by the claimant, represents their deliberate and informed opinion as to the value of such services, advances and disbursements.

The American Commissioner has held in previous decisions (Decisions Nos. 1, 3, 8, 25 and 32), in similar proceedings, in some of which this attorney was an interested party, that when the claimant is entirely competent to look after his own interests in making a fee agreement with his attorney, he falls within the group referred to in the following extract from the Report of the Senate Committee on Finance recommending this fee fixing legislation to the Senate:

It is expected, however, that it will not be necessary to alter amounts fixed by contract with large corporations and others fully capable of protecting their own interests. In such cases the * * * American Commissioner * * * would undoubtedly be justified in fixing the amount specified in the contracts.

In those decisions the American Commissioner expressed his concurrence in this view, and held that the word "reasonable" as used in the fee fixing provisions of the Act should be given this interpretation.

In this case it appears from the record that Captain Godwin was a man of education, with wide worldly experience, and of strong and dominating personality, and, although in January, 1926, when his final fee agreement was made with this attorney, he was suffering from ill health, in consequence of the personal injuries, as compensation for which this award was made, nevertheless, he soon afterwards, on February 28, 1927, made a carefully considered will, which was duly admitted to probate upon his death, approximately a year later. It also appears from the exhibit attached to the attorney's affidavit, dated May 1, 1929, submitted in this proceeding, which purports to be a photostatic copy of the business card in use by Captain Godwin subsequent to the time of his injury, that he had been duly licensed in America, Great Britain and Panama, after examinations passed in New York and London, as a Master Mariner for steam and sailing vessels; that he also held a motor boat license and was a first class pilot for New York Bay and Harbor, the East and Hudson Rivers, and the New York State Barge Canals, as well as for Porto Rico and the adjacent islands, and that he held a commission as Lieutenant Commander in the U. S. Naval Reserve Forces from 1917 to 1919.

In these circumstances the Commissioner holds that Captain Godwin was capable of protecting his own interests in making this settlement agreement with his attorney, and, accordingly, that the fee fixed thereby was reasonable within the meaning of that term as defined in the above quoted extract from the Report of the Senate Committee on Finance recommending this legislation to the Senate. Consequently, as stated in that Report, the American Commissioner "would undoubtedly be justified in fixing the amount specified" in the aforesaid contract as a reasonable fee in this case.

Nevertheless, on account of certain special circumstances in this case, the American Commissioner feels called upon to point out that under the Act of Congress, pursuant to which this proceeding is taken, the fixing of this fee does not impose upon the claimant or his estate an obligation to pay the amount so fixed, but merely determines the maximum fee which the attorney is at liberty to receive under that law for the services rendered in connection with the presentation and collection of this claim. The reasons for pointing this out are briefly that it appears from the record that the claimant

expressed dissatisfaction with the amount of this fee soon after this fee fixing legislation was proposed in Congress, and apparently wrote to his new attorneys indicating a desire to have the amount reduced, on the ground that he considered it excessive for the services rendered, and further because on account of the death of the claimant he is no longer in a position to speak for himself on the questions involved, and also the present claimant desires to have the attorney in this case required to produce proof that he actually incurred the expenses or advanced the sums claimed by him to have been advanced and incurred, the reimbursement of which formed a part of the consideration for the fee agreement, the production of which proof the American Commissioner is not in a position to require in this proceeding.

Accordingly, and inasmuch as the Executor of this Estate will be called upon in the settlement of the estate to account for whatever fee is paid for legal services in connection with this claim, and its reasonableness can thus be passed upon by a court of competent jurisdiction in the State of New York, the American Commissioner desires to make it clear that in this proceeding he goes no further than to fix the maximum fee which would be reasonable under the definition established by the Act of Congress authorizing this proceeding, and leaves it for the appropriate courts of the State of New York, which have wider jurisdiction than is conferred upon the American Commissioner, to finally determine what fee, within the maximum amount fixed by this decision, would be reasonable and proper according to the laws of the State of New York, and taking into consideration the exact amount of the advances and disbursements actually made by the attorney and covered by the fee agreement, proof of which amount can be required by the New York Court in the proceedings for the settlement of the estate.

On the other hand, the American Commissioner is probably in a better position than the New York Courts to ascertain the extent and character of the services rendered by this attorney, as compensation for which the American Commissioner is authorized to fix a fee under the provisions of Section 9 of the "Settlement of War Claims Act of 1928." He, accordingly, has examined the records of this Commission for this purpose, and the information furnished

in this proceeding, and he finds that the said services have been substantially as follows:

Subsequent to the signing by the claimant of the first fee agreement of July 13, 1925, the attorney herein prepared a five and one-half page itemized statement concerning the property losses suffered by the claimant, a two page statement concerning his personal injuries, and a one page affidavit sworn to by the claimant's personal physician concerning the claimant's physical condition before and after the sinking of the "Albert E. Watts." The above documents, together with the first fee agreement of July 13, 1925, were forwarded by the attorney to the American Agency on August 6, 1925. The following day, upon being informed by a fellow attorney that this claim might not be allowed by the Commission because the time for filing claims had expired, this attorney went to Washington for the purpose of conferring with the American Agency about the claim. According to his own affidavit filed in this proceeding, he was told by the Agency that "nothing could be done until the claim had been thoroughly looked over and referred to the German Agent" and that "the German Agent would probably allow the claim to be filed," which was subsequently done.

On August 12, 1925, a letter was sent to this attorney by the American Agency requesting that he furnish the names of the other members of the crew of the "Albert E. Watts," or as many of them as he could obtain. After inquiries at the office of the U. S. Shipping Commissioner in New York, this attorney obtained the crew list of the above ship, but the names of only four whose definite address could be ascertained were furnished the American Agency in this attorney's letter of October 13, 1925. With that letter the attorney also inclosed a one page affidavit of a member of the crew of the "Albert E. Watts" concerning the claimant's personal injuries.

The German Agent, to whom this claim had in the meantime been referred, objected to the evidence presented on the grounds first, that the statements of the claimant's property losses and personal injuries were signed for the claimant by this attorney, and, secondly, that the amount of damages asked, namely, \$83,358.33, was exaggerated. These objections were transmitted to this attorney by the American Agency in its letter of November 16, 1925. This attorney thereupon came to Washington and conferred with

the American Agency about this and other claims in which he was interested as attorney. At this conference the attorney left with the American Agency a letter dated November 15, 1925, which he had received from the claimant, stating that he had been unable to get in touch with this attorney because of sickness which confined him first at a hospital in San Juan, Porto Rico, and then at the U. S. Naval Hospital at Annapolis, Maryland, from which address the letter had been written. In its letter of November 20, 1925, the American Agency informed this attorney that the above letter from the claimant "will be taken up with the German Agent, together with the rest of the file, with a view to settlement. You are, however, again urged to obtain as quickly as possible the claimant's own sworn statement under his own hand, so that there will be no question about arriving at a settlement with the German Agent."

In his endeavors to obtain the claimant's own sworn statement of his property losses and personal injuries, this attorney, according to his affidavit filed in this proceeding, personally visited hospitals in Annapolis, Norfolk, Baltimore, Philadelphia and New York, and telephoned over long distance to a hospital in Boston, but without finding the claimant. He then wrote to the American Agency on December 9, 1925, requesting the address given by the claimant in his letter to this attorney of November 15, 1925, which had been left by this attorney with the American Agency on November 18, 1925. On December 16, 1925, the American Agency replied, giving the address requested, and urging the attorney to communicate at once with the claimant and have him properly prepare his claim with affidavits signed and sworn to by him. It also stated: "If Mr. Godwin's citizenship has not yet been established, please do not overlook this, as it is of first importance in establishing the jurisdiction of this Commission."

Further efforts on the part of this attorney to locate the claimant were unsuccessful up to January 15, 1926, when the American Agency wrote this attorney that it had been advised by the German Agent that, if the claimant would establish a record of his American citizenship as of the time his injuries were suffered, and the fact that he had since continued his American nationality, he would not oppose an award for the amount finally awarded. The American Agency further informed this attorney that "the German Agent

advises that if this offer is rejected, this claim will have to be submitted to the Mixed Claims Commission, United States and Germany, for adjudication, in which event the record will have to be further corroborated and substantiated by the competent documentary evidence of disinterested parties." The attorney accepted this offer in his letter to the American Agency of January 16, 1926, in which he also stated that he had written to the claimant for his citizenship papers. Thereafter, on January 23, 1926, the above described "final power of attorney" was executed by the claimant in favor of this attorney.

The citizenship papers of the claimant were not received by the American Agency up to February 4, 1926, on which date the American Agency informed this attorney that "further delay may jeopardize the settlement that has already been arrived at in this case." On February 6, 1926, claimant's naturalization certificate was forwarded by this attorney to the American Agency, and on February 9, 1926, the German and American Agents, in an agreed Statement of fact, recommended for award the amounts offered by the German Agent, which were the amounts awarded by this Commission.

It is further stated in the attorney's affidavit that he held conferences with the American Agency on December 18, 1925, and January 13, 1926, at the former of which the attorney intimates that he was offered in settlement the sum of \$1,500 for property losses and \$10,000 for personal injuries, which offer he rejected, and at the latter of which he offered to accept \$25,000 for the claimant's property losses and personal injuries, but he was informed that it was doubtful if the German Agent would agree to an award in so large an amount. No record of these conferences appears in the files of the American Agency.

No brief on any question of law or fact involved in this claim was filed by this attorney.

Now, therefore, in view of the considerations above set forth, and of those stated in the general Jurisdictional and Administrative Decision rendered by the American Commissioner under date of September 28, 1928, and after careful examination and full consideration of the information furnished in this proceeding by the attorney and the claimant and by the records of this Commission pertinent to the questions involved, and after due deliberation thereon, and on

the basis and for the purpose hereinabove set forth, and on the understanding that no additional charge is to be made by this attorney for disbursements or expenses,

The American Commissioner decides and fixes as the reasonable fee to be paid by the claimant, Pierrepont E. Twitchell, Executor of the Estate of Herbert C. F. Godwin, Deceased, to the attorney, Peter Baumer, in this case, the fee fixed in the settlement agreed upon between Captain Godwin and this attorney as set out in the final power of attorney executed by Captain Godwin on January 23, 1926, namely, eleven thousand dollars (\$11,000), as full compensation for all services rendered in the prosecution and collection of this claim, as defined in Section 9 of the "Settlement of War Claims Act of 1928."

Done at Washington, D. C., this 13th day of December, 1929.

CHANDLER P. ANDERSON,

American Commissioner,

Mixed Claims Commission,

United States and Germany.



UNIVERSITY OF FLORIDA



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